

**INDIVIDUAL PRACTICES IN CIVIL CASES
MAGISTRATE JUDGE SARAH L. CAVE**

Chambers

Daniel Patrick Moynihan Courthouse
500 Pearl Street, Room 1670
New York, NY 10007
Telephone: 212-805-0214
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Courtroom

Daniel Patrick Moynihan Courthouse
500 Pearl Street,
Courtroom 18A
New York, NY 10007

Cases come before magistrate judges in one of two ways: for one or more specific purposes pursuant to an order of reference by the assigned district judge, or, on consent of the parties, for all purposes pursuant to 28 U.S.C. § 636(c). When a district judge approves an all-purposes consent form signed by counsel, the magistrate judge assumes the role of the district judge. Any appeal is directly to the Court of Appeals and the right to a jury trial is preserved.

It is the uniform practice of the magistrate judges in this District to schedule trials in civil consent cases for firm dates, rather than using a trailing trial calendar or requiring counsel to be available for trial on short notice. Additionally, because magistrate judges rarely try criminal cases, such firm trial dates are unlikely to be changed to accommodate criminal trials. Should counsel wish to consent to have Judge Cave hear their case for all purposes, the necessary form is available at <https://nysd.uscourts.gov/node/754>.

Unless otherwise ordered by Judge Cave, matters before her shall be conducted in accordance with the following practices.¹ These practices are applicable to cases before Judge Cave if the matter is within the scope of the district judge's order of reference or if the case is before Judge Cave for all purposes pursuant to 28 U.S.C. § 636(c). Otherwise, the practices of the district judge to whom the case is assigned apply.

I. Communications with Chambers

- A. Letters.** In general, communications with the Court should be by letter, via electronic case filing ("ECF"), without email or other copy to Chambers. Letters may not exceed three (3) pages in length, exclusive of attachments, which should be kept to a minimum. Any letter containing sensitive or confidential information that a party does not wish to appear on the docket should follow the procedures outlined in Section I.F., below.

¹ Requests for reasonable accommodations on account of disability with respect to these rules may be sent by email to Cave_NYSDChambers@nysd.uscourts.gov.

- B. Telephone Calls.** Telephone calls to Chambers are permitted only for urgent matters requiring immediate attention. If you are encountering difficulties using ECF, call the ECF Help Desk at 212-805-0800. Do not call Chambers.
- C. Pro Se Parties.** By Standing Order, a pro se party must mail all communications with the Court to the Pro Se Intake Unit located at 40 Centre Street, Room 105, New York, NY 10007. A pro se party may not call Chambers or send any document or filing directly to Chambers. Submissions requiring immediate attention should be hand-delivered to the Pro Se Intake Unit. Any non-incarcerated pro se party who wishes to participate in ECF must file a Motion for Permission for Electronic Case Filing, available in the Pro Se Intake Unit or at: <https://nysd.uscourts.gov/node/844>. Any non-incarcerated pro se party who wishes to receive documents by email instead of by regular mail may consent to electronic service by filing a Pro Se (NonPrisoner) Consent & Registration Form to Receive Documents Electronically, available in the Pro Se Intake Unit or at: <https://www.nysd.uscourts.gov/node/845>.
- D. Requests for Adjournments or Extensions of Time.** Requests to adjourn a court conference or court proceeding (including a telephonic court conference) or to extend a deadline must be made by Letter-Motion, after consultation with all affected parties, and must state: (1) the original date of the conference, proceeding or deadline; (2) the number of previous requests for adjournment or extension; (3) whether these previous requests were granted or denied; (4) the reason for the present request; (5) whether all affected parties consent; and (6) if not, the reasons given for refusing. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Case Management Plan must be attached.
- Absent unforeseeable emergencies, all requests for adjournment of a court conference or other court proceeding (including a telephonic court conference) must be made at least 72 hours in advance of the proceeding to be adjourned, and must include at least two (2) proposed dates, on which all counsel are available, for the adjourned proceeding.
- E. Hand Deliveries.** Where permitted by these Rules, hand-deliveries should be left with the Court Security Officers at the Worth Street entrance of 500 Pearl Street and may not be brought directly to Chambers. If the hand-delivery is urgent and requires the Court's immediate attention, ask the Court Security Officers to notify Chambers that an urgent package has arrived that needs to be retrieved immediately by Chambers staff.
- F. Electronic Filing Under Seal.** These procedures only apply to motions and applications before Judge Cave. Filing under seal requires permission of the Court. Unless otherwise ordered, any party wishing to file a document or

portion thereof under seal must comply with the following procedures on or before the date on which the relevant filing is due.

1. **Sealing/Redactions Not Requiring Court Approval.** Federal Rule of Civil Procedure 5.2 describes sensitive information that must be redacted from public court filings without seeking prior Court permission.
2. **Sealing/Redactions Requiring Court Approval.** Motions or Letter-Motions for approval of sealed or redacted filings in civil and miscellaneous cases and the subject documents, including the proposed sealed document(s) must be filed electronically through the Court's ECF system in conformity with the Court's standing order, 19-mc-583, and ECF Rules & Instructions, Section 6.

II. Pretrial Procedures

- A. **Initial Case Management Conference.** Except for Pro Se Cases, parties must confer and then file a Report of Rule 26(f) Conference and Proposed Case Management Plan one week before the Initial Case Management Conference. A template form for the Report of Rule 26(f) Conference and Proposed Case Management Plan is available at www.nysd.uscourts.gov/hon-sarah-l-cave.
 1. **Pro Se Cases.** Each party must submit a Case Report and Proposed Case Management Plan for Pro Se Case one week before the scheduled conference in conformance with the procedures in Section I above. The parties shall use the form Proposed Case Management Plan template for Pro Se Cases found at www.nysd.uscourts.gov/hon-sarah-l-cave.
 2. **Attendance.** Lead counsel for the parties are expected to attend the Initial Case Management Conference. Reasonable accommodations will be made for parties or their counsel who cannot attend in person on account of disability. An incarcerated party who is unable to attend this or other conferences, may be able to participate by telephone. If appropriate, the Court's scheduling order will outline the procedures for participation by telephone.
- B. **Confidentiality Stipulations and Protective Orders.** In cases where confidential information will be exchanged, the parties must utilize the Court's model Confidentiality Stipulation and Proposed Protective Order found at www.nysd.uscourts.gov/hon-sarah-l-cave; provided, however, the parties may apply for a protective order that differs from the Court's model by submitting a letter request via ECF and attaching the proposed order showing in a blackline comparison how the proposed order differs from the Court's model. The letter should explain why the modifications are needed and note any disagreements

between the parties regarding the modifications from the Court's model.

C Discovery Disputes

- 1. Requirement to Meet and Confer.** No discovery dispute shall be heard unless the moving party (including a non-party seeking relief) has first conferred in good faith with the adverse party or parties by telephone or in person in an effort to resolve the dispute. An exchange of letters or emails alone does not satisfy this requirement. Counsel must respond promptly and in good faith to any request from another party to confer in accordance with this paragraph.
- 2. Letter-Motion for Discovery Conference.** If the parties have met and conferred but cannot resolve their dispute, the moving party must request a discovery conference with the Court, by Letter-Motion, as required by Local Civil Rule 37.2. Counsel should select the "Letter-Motion" option when filing on ECF. Letter-Motions may not exceed three (3) pages in length, exclusive of attachments, which should be kept to a minimum, and must clearly set forth the issues in dispute and the relief sought. As part of the Letter-Motion, the moving party must certify that the required in-person or telephonic conference took place between counsel for the relevant parties and, in particular, must state: (1) the date and time of such conference; (2) the approximate duration of the conference; (3) the names of the attorneys who participated in the conference; (4) the adversary's position as to each issue being raised (as stated by the adversary during the in-person or telephone conference); and (5) that the moving party informed the adversary during the conference that the moving party believed the parties to be at an impasse and that the moving party would be requesting a conference with the Court. Simply attaching copies of correspondence between counsel does not satisfy these requirements.
- 3. Briefing Schedule.** Unless the Court has ordered or approved otherwise, any opposition to a Letter-Motion shall be filed within three (3) business days of the moving letter, and any reply shall be filed within one (1) business day of the opposition. Letters in opposition and replies may not exceed three (3) pages in length exclusive of attachments, which should be kept to a minimum. The parties may agree to a different briefing schedule, but they must request the Court's approval of their alternate schedule, either in the moving letter or as soon as agreement is reached. The Court must approve the alternate schedule, otherwise, the parties must adhere to the schedule as enumerated in these Individual Practices. If the Letter-Motion requests emergent or expedited relief,

opposing counsel are advised to file any opposition as promptly as possible.

4. **Courtesy Copies.** Courtesy copies of Letter-Motions are not required unless the attached exhibits exceed ten (10) pages, in which case one courtesy copy, marked as such on a cover page, should be submitted to Chambers promptly after filing. Courtesy copies should bear the ECF header generated at the time of electronic filing and include protruding tabs for any exhibits. Bulky materials should be two-sided, and neatly bound or placed in 3-ring binders, with appropriate dividers.
5. **Discovery Conferences/Oral Argument on Letter-Motions.** The Court's preference is to hold a conference with the parties to address any discovery disputes raised by a Letter-Motion. Based on the parties' letters and matters discussed at the conference, during or after the conference, the Court will decide the discovery dispute or request a more formal briefing.

Junior members of legal teams representing clients are invited to argue Letter-Motions they have helped prepare. Firms are encouraged to provide this opportunity to junior attorneys for training purposes. The Court is amenable to permitting more than one lawyer to argue for one party if this creates an opportunity for a junior lawyer to participate. The ultimate decision of who speaks on behalf of the client is for the lawyer in charge of the case, not for the Court.

III. Motions Other Than Discovery Motions

For motions other than discovery motions, a pre-motion conference is not required unless otherwise instructed in a particular case. A pre-motion conference may be requested by Letter-Motion where counsel believes that an informal conference with the Court may obviate the need for the motion or reduce the issues in dispute. Counsel should select the "Letter-Motion" option on ECF for filing such a request.

- A. **Briefing Schedule.** Unless the Court has ordered or approved otherwise, opposition and reply papers with respect to formal motions will be due in accordance with Local Civil Rule 6.1. The parties are strongly encouraged to agree on a reasonable briefing schedule before the moving papers are filed. If the parties have agreed to such a schedule, they must request the Court's approval of their alternate schedule, either in the moving party's notice of motion or by Letter-Motion as soon as agreement is reached. Should the parties thereafter agree to modify their briefing schedule, they must promptly request the Court's approval of the new schedule by Letter-Motion. The Court must approve the alternate or new briefing schedule; otherwise, the parties must

adhere to the schedule as enumerated in Local Civil Rule 6.1.

- B. Memoranda of Law.** The typeface, margins, and spacing of motion papers must conform to Local Civil Rule 11.1. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to ten (10) pages. Memoranda of ten (10) pages or more shall contain a table of contents and a table of authorities.
- C. Courtesy Copies.** Courtesy copies are not required and should not be submitted unless otherwise requested by the Court. Should the Court so request, courtesy copies should bear the ECF header generated at the time of electronic filing and include protruding tabs for any exhibits. Bulky materials should be two-sided, and neatly bound or placed in 3-ring binders, with appropriate dividers.
- D. Oral Argument on Motions.** Parties may request oral argument by Letter-Motion. Counsel should select the “Letter-Motion” option on ECF for filing such a request. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date and time.

Junior members of legal teams representing clients are invited to argue motions they have helped prepare. Firms are encouraged to provide this opportunity to junior attorneys for training purposes. The Court is amenable to permitting more than one lawyer to argue for one party if this creates an opportunity for a junior lawyer to participate. The ultimate decision of who speaks on behalf of the client is for the lawyer in charge of the case, not for the Court.

- E. Motions in Pro Se Cases.** As required by Local Civil Rule 7.2, counsel must provide a pro se litigant with printed copies of decisions cited in any submission that are unreported or reported exclusively on computerized databases.

Where a party seeks summary judgment against a pro se litigant, the party must also comply with the notice requirements of Local Civil Rule 56.2. Where a party moves to dismiss or for judgment on the pleadings against a pro se litigant and refers to matters outside the pleadings, counsel must serve and file the notice set forth in Local Civil Rule 12.1. In such situations, counsel is strongly encouraged to move in the alternative for summary judgment so that the pro se litigant understands, based on the Local Civil Rule 56.1 submission, which facts are relevant to the motion.

IV. Pretrial Procedures For Consent Cases

- A. Applicability.** The procedures set out below apply only to cases in which the parties have consented pursuant to 28 U.S.C. § 636(c) to have all proceedings

before Judge Cave, including trial.

- B. Pretrial Disclosure.** The parties are reminded of their obligations to make certain disclosures regarding expert testimony pursuant to Fed. R. Civ. P. 26(a)(2) and to make disclosures regarding evidence that may be presented at trial pursuant to Fed. R. Civ. P. 26(a)(3). Failure to comply with these requirements may result in preclusion or other sanctions.
- C. Joint Pretrial Order.** Unless otherwise ordered by the Court, the parties shall submit to the Court for its approval a Joint Pretrial Order within 30 days after the date for the completion of discovery, or, if a summary judgment motion has been filed, within 30 days after the decision on the motion. The proposed Joint Pretrial Order shall be signed by all parties and include the following:
1. The full caption of the action.
 2. The names, addresses, telephone numbers (both office and cellular), and email addresses of each principal member of the trial team.
 3. A brief statement by plaintiff (or, in a removed case, by defendant) as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction, including citations to all statutes relied on and relevant facts, such as citizenship and jurisdictional amount.
 4. A brief summary by each party of the claims and defenses that party has asserted that remain to be tried, including citations to all statutes relied on, but without recital of evidentiary matter.
 5. With respect to each claim remaining to be tried, a brief statement listing each element or category of damages sought with respect to such claim and a calculation of the amount of damages sought with respect to such element or category.
 6. A statement by each party as to whether the case is to be tried with or without a jury, and the anticipated number of trial days needed.
 7. Any stipulations or agreed to statements of fact or law.
 8. A statement by each party as to the witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition. Absent extraordinary circumstances, a party may not call as a witness in its case in chief any person not listed in the Joint Pretrial Order.
 9. A designation by each party of deposition testimony to be offered in that party's case in chief, referencing page and line numbers, with any cross-designations and objections by any other party. If there is no

objection or cross-designation, the Court will deem the opposing party to have waived any such objection or cross-designation. Absent extraordinary circumstances, a party may not offer in its case in chief deposition testimony that is not listed in the Joint Pretrial Order.

10. A list by each party of exhibits to be offered in its case in chief. Each exhibit shall be pre-marked (plaintiff to use numbers, defendant to use letters). For each exhibit as to which there is an objection, the party objecting must briefly specify, next to the listing for that exhibit, the nature of the party's objection (e.g., "authenticity," "hearsay," "Rule 403"). Any objection not listed shall be deemed waived. Absent extraordinary circumstances, a party may not offer in its case in chief any exhibit not listed in the Joint Pretrial Order.
11. A proposed schedule by which the parties will exchange demonstrative exhibits that the parties intend to use at trial, notify each other of any objections thereto, consult with each other regarding those objections and notify the Court of any remaining disputes.
12. All other matters that the Court may have ordered or that the parties believe are important to the efficient conduct of the trial.

D. Filings Before Trial. Unless otherwise ordered by the Court, the following must be filed at the same time as the filing of the joint pretrial order:

1. In jury cases, the parties must **jointly** file (a) requests to charge, (b) proposed *voir dire* questions, and (c) where applicable, a proposed special verdict form. To the extent a party objects to another party's requested charge, *voir dire* questions, or special verdict form, the joint submission should include the objecting party's (1) grounds for objection (or refer to the joint pretrial memorandum for a full discussion of the objection), and (2) proposed alternative. **All requests to charge, objections, and alternatives must include citation to controlling authority.** Electronic copies of this joint submission should be submitted to the Court; counsel should contact Chambers for instructions on how to submit these materials.
2. In non-jury cases, parties must file proposed findings of fact and statements of law. If the parties believe it would be useful, they also may file pretrial memoranda in nonjury cases. Pretrial memoranda are limited to 25 pages.
3. In all cases, motions addressing any evidentiary or other issues which should be resolved *in limine*.

E. Marking Exhibits for Trial. At the commencement of trial, each party

must provide each other party, and the Court, with a tabbed binder or binders containing courtesy copies of its trial exhibits and deposition designations.

- F. Witnesses at Trial.** When a party's case commences, that party is expected to have witnesses available to fill the trial day, which runs from 9:00 am to 5:00 pm, with a one-hour lunch break. The parties are on notice that if a party does not have a witness available to testify, the Court may deem that party to have rested. Any request to have a witness testify out of order and/or on a particular day must be included in the joint pretrial order. Untimely applications will be denied.